

Opinions

1958

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September 26

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Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: Sarah J. Stickney, OAA, Hampstead, N.H.

Dear Mr. Barry:

This is in reply to your letter of September 8, 1958, in which you request our interpretation of the will of the above-named recipient's spouse in relation to her equity in certain real estate.

With your letter you submitted what purports to be a copy of the will of the recipient's late husband, Daniel K. Stickney, the first clause of which provides for payment of the decedent's debts and funeral expenses, and the second clause of which reads as follows:

"I give, devise and bequeath all my property real and personal of every description and wherever found to my wife Sarah J. Stickney for her use and income during her life time with the right and authority to sell or mortgage any of such property that may be necessary for her support and maintenance and at decease of my said wife my will is that all the remainder of my estate shall become the property of my sons, Forrest C. Stickney and Wilfred D. Stickney in equal shares."

You advise that Mrs. Stickney was a recipient from September 30, 1956 until November 15, 1957, during which time she received an amount of \$1,131.80. You further advise that the real estate, presumably the homestead, which she is no longer able to occupy as a result of committal to the State Hospital, has been sold by her guardian and that a question has been raised as to the value to be placed on Mrs. Stickney's life estate.

You state that your Department has taken the position that under the terms of the will the Department's claim for Old Age Assistance furnished can be paid from the proceeds realized from the sale with the remainder to be utilized for her current support at the State Hospital.

James J. Barry, Commissioner

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After carefully considering the terms of the will and pertinent statutes hereafter noted we have concluded that the position which has been taken by your Department is correct.

In our view, Mr. Stickney's will operated to make Mrs. Stickney a life tenant of the entire residue of his estate, including the premises in question, with full power, however, to consume the entire corpus of the estate if "necessary for her support and maintenance". When Mrs. Stickney became legally incompetent it appears from your letter that a legal guardian was appointed to manage her affairs. The legal guardian acquired the same rights with respect to Mr. Stickney's property as Mrs. Stickney had and the legal guardian has chosen to exercise the power to invade the principal granted by Mr. Stickney's will. The funds arising from the sale are now available for Mrs. Stickney's support and maintenance.

Under the provisions of RSA 167:208, as a condition to receiving Old Age Assistance, it was necessary for Mrs. Stickney to submit an acknowledged agreement to reimburse the Federal Government, the State, and the County or Town for all assistance granted. This agreement constitutes a just debt owed by Mrs. Stickney.

Under RSA 462:4 a guardian is charged with the duty of paying the just debts of his ward out of the ward's property. It thus seems clear that the guardian has a legal duty to make reimbursement for Old Age Assistance furnished out of the funds now in his hands.

Since a guardian is under the further duty to "take care of the person and estate of his ward" (RSA 462:4), and since he has the same right as his ward had to use the entire corpus of Daniel Stickney's estate if necessary for Mrs. Stickney's support, it also follows that such funds as remain in his hands after reimbursement for Old Age Assistance should be used to pay for Mrs. Stickney's support at the State Hospital.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR,Jr/lt